

**United States Department of Labor
Employees' Compensation Appeals Board**

C.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Knoxville, TN, Employer**

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**Docket No. 11-654
Issued: October 6, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 26, 2011 appellant filed a timely appeal from a December 28, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.²

ISSUE

The issue is whether appellant met his burden to establish that he sustained a traumatic injury in the performance of duty on June 1, 2010.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant concurrently filed a request for a review of the written record, which was dismissed.

FACTUAL HISTORY

On June 2, 2010 appellant, then a 63-year-old city carrier, filed a traumatic injury claim alleging that his right knee buckled as he was stooping to pick up a magazine on the morning of June 1, 2010.³ He felt pulling behind his knee and was unable to put weight on it. Appellant did not incur any time loss from work.⁴

A June 1, 2010 right knee x-ray report from Dr. Anton M. Allen, a Board-certified diagnostic radiologist, showed effusion, moderate osteoarthritis and slight posterior displacement of the bipartite patellar segment. A June 1, 2010 emergency department report from Dr. Caron R. Cook, a Board-certified emergency physician, stated that appellant was squatting on the job when he felt a painful pull behind the right knee. She pointed out that he previously underwent right anterior cruciate ligament surgery. Dr. Cook noted the June 1, 2010 x-ray findings and observed posterior knee pain and tenderness on examination. She assessed right knee pain.

In June 2, 2010 reports, Dr. Charles D. Rutledge, a Board-certified family practitioner, related that appellant sustained a right posterior knee injury on June 1, 2010 when he bent over to pick up a magazine. On examination, he observed popliteal fullness and a mild decrease in range of motion (ROM). Dr. Rutledge diagnosed right knee strain with a possible Baker's cyst. He released appellant to modified duty.

Dr. Jay Hammett, Jr., a Board-certified family practitioner, specified in a June 9, 2010 report that appellant was at work on June 1, 2010 when he dropped a magazine, bent down to pick it up and experienced right knee pain. He also noted that appellant previously underwent surgery to repair the right anterior cruciate ligament. Dr. Hammett observed degenerative arthritis, popliteal tenderness, swelling and ligament tightness on examination while an x-ray exhibited a preexisting patellar fracture with rounded edges and a possible Baker's cyst. He diagnosed knee pain due to bending activity. In a June 11, 2010 evaluation form, Dr. Hammett released appellant to regular duty.⁵

In a June 29, 2010 report, Dr. Paul T. Naylor, a Board-certified orthopedic surgeon, related that appellant bent down to pick up a magazine at work on June 1, 2010 when his right knee buckled and gave way, resulting in anterior and medial joint line pain. On examination, he observed slight effusion, medial tenderness, patellofemoral crepitus and a positive patellar apprehension sign. X-rays revealed narrowing of the medial joint space, marginal osteophytes of the femoral condyle and tibial plateau, and superior and inferior patellar pole spurring.

³ Appellant retired effective October 30, 2010.

⁴ The present claim was originally received as a simple, uncontroverted case resulting in minimal or no time loss from work and payment was approved for limited medical expenses without formal adjudication. In addition, OWCP previously accepted a February 23, 1993 claim for a dislocated right knee. The previous claim is not before the Board on the present appeal.

⁵ The top portion of the evaluation form indicated that appellant sustained a left knee injury on June 1, 2010. This appears to be an inadvertent error in view of the context of other contemporaneous evidence which references a right knee condition.

Dr. Naylor diagnosed right medial meniscal tear. He diagnosed mild degenerative joint disease of the right knee with a probable meniscal tear in July 13 and August 26, 2010 progress notes and mild exacerbation of preexisting arthritis in a September 22, 2010 progress note.⁶

On November 11, 2010 appellant claimed six hours of wage-loss compensation on August 26, 2010 when he left work early to receive an injection to his knee.

OWCP scheduled a conference call, which was held on November 23, 2010. Appellant detailed that he was on box mail duty around 8:15 a.m. on June 1, 2010 when he dropped a magazine weighing less than four ounces. As he stooped to pick up the magazine, he felt a pull behind the right knee and was subsequently unable to place weight on it. Appellant surmised that his right anterior cruciate ligament operation took place sometime after February 23, 1993. He indicated that he retired on October 30, 2010. The employing establishment did not participate in the conference call.

By decision dated December 28, 2010, OWCP denied appellant's claim, finding the evidence insufficient to establish that a June 1, 2010 employment incident occurred as alleged.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,⁷ including that he is an "employee" within the meaning of FECA and that he filed his claim within the applicable time limitation.⁸ The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.⁹

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.¹⁰

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹¹

⁶ Dr. Naylor's progress notes restated his June 29, 2010 clinical findings. The record also contains separate medical forms dated July 13, August 26 and September 22, 2010, each of which essentially duplicated content found in the corresponding progress note.

⁷ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁸ *R.C.*, 59 ECAB 427 (2008).

⁹ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

¹⁰ *T.H.*, 59 ECAB 388 (2008).

¹¹ *Gregory J. Reser*, 57 ECAB 277 (2005); *R.T.*, Docket No. 08-408 (issued December 16, 2008).

Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.¹²

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹³

ANALYSIS

The Board finds that the case is not in posture for decision.

As noted, an employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence. Appellant's statements as well as the medical histories obtained by Drs. Cook, Hammett, Naylor and Rutledge consistently noted that he was bending down when he experienced right knee symptoms on June 1, 2010.¹⁴ Moreover, he promptly received medical treatment on the date of injury and filed a claim the following day. The employing establishment did not refute appellant's factual account or provide any evidence to suggest that the claimed act of bending to pick up a magazine did not occur as alleged on June 1, 2010. In view of the totality of the evidence, the Board finds that he established that the June 1, 2010 employment incident occurred as alleged.

The Board finds that, while the June 1, 2010 incident is established, the medical evidence contained insufficient medical rationale to establish that appellant's right knee condition was causally related to the accepted employment incident. Although Drs. Cook, Hammett, Naylor and Rutledge opined that the knee was injured as a result of stooping on June 1, 2010, none of these physicians adequately explained how such activity pathophysiologically caused or

¹² *Betty J. Smith*, 54 ECAB 174 (2002).

¹³ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁴ See *Caroline Thomas*, 51 ECAB 451 (a consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can be evidence of the occurrence of the incident).

aggravated the injury.¹⁵ The need for rationale is important in this case since Dr. Hammett pointed out in a June 9, 2010 report that appellant had a preexisting patellar fracture.¹⁶

Although the medical evidence of record was not sufficiently rationalized to meet appellant's burden of proof, the Board finds that it nonetheless raises an uncontroverted inference of causal relationship warranting further development of the medical record.¹⁷ All the medical evidence that addresses causal relationship generally supports that appellant's right knee condition is employment related. Dr. Naylor's medical records for the period June 29 to September 22, 2010 demonstrate that he obtained an accurate medical history, conducted a comprehensive physical examination, reviewed radiological test results, rendered multiple diagnoses and offered an opinion that was consistent with his clinical findings. On remand OWCP should prepare a statement of accepted facts and refer appellant to an appropriate Board-certified specialist, who shall provide a rationalized medical opinion regarding whether the accepted June 1, 2010 employment incident caused or aggravated a right knee condition. After conducting further development as it may find necessary, it shall issue an appropriate merit decision.

CONCLUSION

The Board finds that the case is not in posture for decision and must be remanded for further development of the record.

¹⁵ See *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

¹⁶ See *W.S.*, Docket No. 10-1538 (issued April 1, 2011).

¹⁷ See *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

ORDER

IT IS HEREBY ORDERED THAT the December 28, 2010 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action consistent with this decision of the Board.

Issued: October 6, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board